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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8 ROSEMERE NEIGHBORHOOD  
9 ASSOCIATION, a Washington non-profit  
10 corporation,,

11                   Plaintiff,

12                   v.

13                   UNITED STATES ENVIRONMENTAL  
14                   PROTECTION AGENCY, an agency of the  
15                   United States Department of Interior; and  
16                   STEPHEN L. JOHNSON, in his official  
17                   capacity as Administrator of the Environmental  
18                   Protection Agency,

19                   Defendant.

20                   Case No. C05-5443FDB

21                   ORDER GRANTING DEFENDANT'S  
22                   MOTION TO DISMISS

23                   This matter comes before the court on the motion of Defendants United States  
24                   Environmental Protection Agency and Stephen L. Johnson, Administrator of the Environmental  
25                   Protection Agency (collectively EPA), to dismiss this action for lack of subject matter jurisdiction.  
26                   Having reviewed the motion, the response of Plaintiff Rosemere Neighborhood Association  
27                   (Rosemere), and the balance of the record, the court finds that the motion should be granted.

I.

28                   In this action, Rosemere asks the court to compel EPA to take action on an administrative  
29                   complaint Rosemere filed against the City of Vancouver. Rosemere requests that the court order  
30                   EPA to review the complaint and decide whether to accept, reject, or refer it to another federal  
31                   agency pursuant to 40 C.F.R. § 7.120. EPA has since decided to accept the Rosemere administrative  
32                   ORDER - 1

1 complaint for designation. Accordingly, EPA moves to dismiss the lawsuit as moot and for lack of  
2 subject matter jurisdiction. Rosemere argues that a live controversy still remains because it also  
3 seeks a declaratory judgment regarding the legality of EPA’s delay in responding to Rosemere’s  
4 complaint. Rosemere also argues that this case is an exception to the mootness doctrine because the  
5 challenged conduct here is capable of repetition.

II.

7       EPA regulations, codified at 40 C.F.R. Part 7, provides that persons believing that they have  
8 suffered discrimination in a covered activity may file a complaint with EPA. 40 C.F.R. § 7.120(a).  
9 When a complaint is filed, EPA is required to acknowledge receipt of the complaint and then  
10 immediately initiate complaint processing procedures. 40 C.F.R. § 7.120 (c), (d). The regulations  
11 further contemplate that, within 20 calendar days of acknowledgment or receipt, EPA’s Office of  
12 Civil Rights will “review the complaint for acceptance, rejection, or referral to the appropriate  
13 Federal agency.” 40 C.F.R. § 7.120(d)(1)(j). If the complaint is accepted, notice of that fact is to be  
14 given to, *inter alia*, the complainant. 40 C.F.R. § 7.120(e)(1)(ii).

15 On or about December 13, 2003, Rosemere filed an administrative complaint with EPA  
16 pursuant to 40 C.F.R. § 7.120(a) alleging that the City of Vancouver was retaliating against it for  
17 filing a prior administrative complaint under Title VI.<sup>1</sup> Receipt was acknowledged by EPA on  
18 January 12, 2004. It is undisputed that EPA did not then take timely action on Rosemere's  
19 administrative complaint.

Rosemere filed the instant action on July 1, 2005, seeking a declaration that EPA was acting unlawfully in having failed to accept, reject or refer its administrative complaint. Rosemere also seeks a mandatory order compelling EPA to act. OCR received a copy of Rosemere's lawsuit on or about July 26, 2005. Prior to that time, on June 9, 2005, OCR had reached the conclusion that the

<sup>1</sup>The prior administrative complaint is not part of the present lawsuit.

1 Rosemere administrative complaint satisfied the jurisdiction criteria and a draft letter was prepared  
 2 accepting the complaint for investigation. Letters notifying Rosemere and the City of Vancouver of  
 3 OCR's decision to accept the complaint were sent on August 16, 2005.

4 III.

5 **A. Rosemere's Request for Declaratory Relief is Moot**

6 The case or controversy requirement of Article III demand dismissal when the issues  
 7 presented are no longer "live" or the parties lack a cognizable interest in the outcome. *Murphy v.*  
 8 *Hunt*, 455 U.S. 478, 481 (1982). A case becomes moot when it "loses its character as a present, live  
 9 controversy of the kind that must exist" in order to avoid "advisory opinions on abstract questions of  
 10 law." *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9<sup>th</sup> Cir. 2001).

11 By its complaint, Rosemere seeks an order compelling EPA action unlawfully withheld or  
 12 unreasonably delayed. That action is an OCR decision to accept, reject, or refer its administrative  
 13 complaint, an action that OCR took on August 16, 2005. Rosemere's case is, therefore, moot. This  
 14 court cannot now grant Rosemere's request for relief in the form of a declaratory judgment that EPA  
 15 acted wrongfully. See, *United Public Workers of America v. Mitchell*, 330 U.S. 75, 89, 67 S.Ct.  
 16 556, 564 (1947) (federal court cannot issue declaratory judgment if claim has become moot); *Public*  
 17 *Utilities Comm'n of the State of California v. Federal Energy Regulatory Comm'n*, 100 F.3d 1451,  
 18 1459 (1996) (*citing Noatak v. Blatchford*, 38 F.3d 1505, 1514 (9<sup>th</sup> Cir. 1994)).

19 **B. No Exception to the Mootness Doctrine Applies**

20 Rosemere also urges that its case is not moot because it falls within the "capable of repetition  
 21 while evading review," exception to the mootness doctrine. However, this exception applies only in  
 22 "exceptional circumstances." *GTE California, Inc. v. F.C.C.*, 39 F.3d 940, 945 (9<sup>th</sup> Cir. 1994) and  
 23 provides only "minimal protection to individual plaintiffs." *Doe v. Attorney General of U.S.*, 941  
 24 F.2d 780, 784 (9<sup>th</sup> Cir. 1991). In order to fit the exception, a controversy must meet two  
 25 requirements: (1) the challenged action was in its duration too short to be fully litigated prior to its  
 26

1 cessation or expiration, and (2) there was a reasonable expectation that the same complaining party  
2 would be subjected to the same action again. *Murphy v. Hunt*, 455 U.S. 478, 482 102 S.Ct. 1181,  
3 1183 (1982).

4 In order to take advantage of this exception, Rosemere must demonstrate that there is a  
5 “reasonable expectation” that it “would be subjected to the same action again.” *Headwaters, Inc. v.*  
6 *Bureau of Land Management, Medford Dist.*, 893 F.2d 1012, 1016 (9<sup>th</sup> Cir. 1990). Rosemere has  
7 not shown that this incident was anything more than an isolated instance of untimeliness and  
8 oversight. Rosemere’s reliance on the principle that “a defendant’s voluntary cessation of a  
9 challenged practice does not deprive a federal court of its power to determine the legality of the  
10 practice,” provides it no help. *See, Friends of the Earth, Inc. v. Laidlaw Environmental Services*,  
11 528 U.S. 167, 189 (2000). There is no evidence that EPA’s failure to act timely on Rosemere’s  
12 complaint constitutes a “practice” which EPA could resume once the action was dismissed on  
13 grounds of mootness. In essence, Rosemere has received all the relief to which it is entitled and now  
14 seeks an advisory opinion of EPA’s inaction. This, the court cannot do.

15 ACCORDINGLY,

16 IT IS ORDERED:

17 (1) Defendant’s motion to dismiss (Dkt.# 11) is **GRANTED**; and  
18 (2) This case is dismissed for lack of subject matter jurisdiction.

19  
20 DATED this 7th day of December, 2005.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE